



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, DC 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/326,014 06/04/99 BOTTS

M MOAR:100-41-

HM22/1226

LIZ GRAF
HOWREY SIMON ARNOLD & WHITE, LLP
750 BERING DRIVE
HOUSTON TX 77057

EXAMINER

LEVY, N

ART UNIT

PAPER NUMBER

1616

DATE MAILED:

12/26/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

BEST AVAILABLE COPY

Office Action Summary

Application No.

326014

Applicant(s)

BOTTJ et al

Examiner

Mertley

Group Art Unit

146 10

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 1/20/00
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-45 is/are pending in the application.
- Of the above claim(s) 19-35 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-18, 36-45 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1-45 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____ ☐ Interview Summary, PTO-413
- ☒ Notice of Reference(s) Cited, PTO-892 ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948 ☐ Other _____

Office Action Summary

Art Unit: 1616

Receipt is acknowledged of election and Revocation.

Applicant's election without traverse of Group I in Paper No. 7 is acknowledged.

Claims 19-35 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

Claims 1-2, 12-13, 18, 36, 39 are rejected under 35 U.S.C. 102() as being anticipated by Stock - '96.

Stock reviews Foliar application of microencapsulated Triazole fungicides, including flurquinconazole, with adjuvants.

Claims 1-3, 7, 12,-18, 36, 39 and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Russell et al WO 90103732.

See p.5-7- Triadlimnol and propiconazole with diluent, dispersant as powder, need dressing, dispersion, granule and any form known in the art (p.6, bottom) is shown, applied to

Art Unit: 1616

plants to protect them against fungus p.5, top, 7, bottom matrices include polyalkylene oxides (p.6, ethylene/propylene oxide blocks copolymers, line 25-27) and clay (p.7, line 11-23).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-~~18~~, 36-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Russell et al WO9003732 in view of Stock '96 Tocker-EP0004758 Capuzzi et al EP0729700 and DAO et al 5719103.

Russell applies the instant triazole fungicides to seeds and plants, stating one can use any art known delivery form-Russell exemplified dispersions, and also uses added actives. The uses added actives. The instant polymers are scarcely mentioned. Toeker (p.3) uses them, with fungicides and insecticides, so all the particles are less than 300 microw (p.4), long, and of 5 microns diameter. Stock show microcapsule use of the instant Triarzoles, and of Russell, showing, again, these forms are well known in the plant protection arts. Capuzzi further show equivalency of the instant triazoles (p.4, lines 4-6) for plant protection (lines 1,2, P.2). Dao further show seed and folier treatment with Febuonazole (Example).

The primary reference discloses the essence of the instant invention as claimed, but does not specify each and every element of the instantly claimed Methods and compositions. However,

Art Unit: 1616

the secondary reference directed as the same methods and compositions to solve the same problem of the primary reference do provide these additional elements.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize an effective fungicidal composition to protect plants, to use Russell's modified with the particular fungide and delivery form desired, as a function of the particular fungus crop and application equipment desired.

The polymers forms are shown by DAO to be art recognized formulations.

Stock teaches one having ordinary skill in the art would be motivated to perform this modification in order to achieve greater efficacy.

All the critical elements of the instant are disclosed. The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired depending upon the particular pest and crop of interest, reduction of toxicity, cost minimization, enhanced, and prolonged, or synergistic effects.

Applicant has not provided any objective evidence of criticality, nonobvious or unexpected result that the administration of the particular ingredient' concentration or forms, size and polymers provides any greater or different level of prior art expectation as claimed, and the use of ingredient for the functionality for which they are known to be used is not basis for patentability.

Art Unit: 1616

The instant invention provides well known old art recognized compounds, with well known art recognized effects, applied by well known art recognized methods to achieve control over pests or crops as is well known in the art.

Claims 1-3, 5, 7, 8, 12-18, 36-39, 41, 43, 45 are rejected under 35 U.S.C. 102(e) as being anticipated by DAO et al 5719103.

See example 1, claim 1, col 2, line 39-44, col 18.

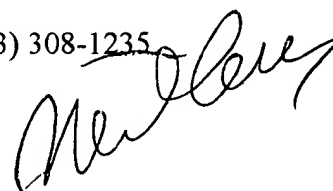
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday-Friday from 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-5628. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy/sg

12/14/00



NEIL S. LEVY
PRIMARY EXAMINER